

# The Fence Lake Mine Project

## Archeology as Traditional Cultural Property

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**T**his paper describes the organization and structure of an Institute of the North American West (INAW) project designed to identify traditional cultural properties of concern to tribal communities within the area of a proposed coal mine and to explain tribal conclusions about archeological sites as possible traditional cultural properties, with a focus on the conclusions of one tribe, the Zuni.

In 1991 the Salt River Project Agricultural Improvement and Power District (SRP), a non-profit, public utility based in the state of Arizona, contracted with the Institute of the North American West, a non-profit educational institution, to conduct ethnohistorical research pertaining to Native American traditional cultural properties that may be impacted by the development of the Fence Lake Mine Project. The Native American groups that expressed concerns when contacted, and were therefore the focus of research, included the Acoma Tribe, the Hopi Tribe, the Ramah Chapter of the Navajo Nation, and the Zuni Tribe.

The Fence Lake Mine Project entails a proposed coal mine in western New Mexico, with an associated transportation corridor for conveying coal to the Coronado Generating Plant in eastern Arizona. The proposed SRP coal mine encompasses a tract of land covering approximately 17,600 acres, located in an area that surrounds Cerro Prieto, a prominent volcanic cone about nine and one half miles northeast of Zuni Salt Lake. The proposed mine is near the tiny community of Fence Lake, New Mexico, from which it derives its name. The transportation corridor is approximately 40 miles long and follows a general route westward from the mine through Nations Draw, Largo Creek, and the Carrizo Wash. The transportation corridor passes about 13 miles to the north of the Zuni Salt Lake maar.

As a result of SRP's application for a federal coal lease in Catron and Cibola Counties, New Mexico, in 1990 the Socorro Resource Area of the Bureau of Land Management (BLM) prepared first a draft and then a final Environmental Impact Study (United States 1990a; United States 1990b). In December of that year the BLM agreed to lease 6,400 acres of federal lands in the project area to SRP for the proposed coal mine, and in 1991 that lease was officially issued (United States 1990c). SRP had previously obtained a large state lease and owns a substantial amount of the private land within the project area. There are no tribally owned or tribal trust lands located within the Fence Lake Mine and Transportation Corridor project area.

Because of the potential destruction of cultural resources having significance to members of nearby Native American communities, during the EIS process (in 1989 and 1990) SRP contacted each of the tribes in the area and asked them if they had concerns about the proposed coal mine. Meetings were held throughout the area, including at Zuni Pueblo, during the EIS process. The Zuni and Hopi Tribes and the Ramah Chapter of the Navajo Nation initially expressed concerns about potential impacts that might occur as a result of the mine. Later, the Acoma Tribe also expressed concerns. The Draft EIS and the Final EIS were made available to each group along with other pertinent documents that they requested. A condition of the lease was that there would be further consultation between SRP and the tribes, and that a thorough ethnographic report on the Native American use of the area would be completed. This report would document known historic and prehistoric sites in the project area that are important to each tribe. Cultural resources were to be identified and recommendations for avoiding or mitigating potential project impacts were to be made.

In 1991 Salt River Project met with each of the tribes that had expressed concerns about the proposed Fence Lake Mine. Representatives of Hopi, Zuni and Ramah all told SRP that they had worked with the Institute of the North American West on other cultural and natural resource projects and asked that SRP contract with the Institute to produce the necessary ethnohistoric report. Subsequently, Hopi, Zuni, Acoma and the Ramah Chapter of the Navajo Nation entered into sub-contracts or agreements with INAW to carry out the activities necessary to complete the ethnohistoric report.

Details of the contract between INAW and SRP, as well as the subcontracts between INAW and the tribes, were important to the success of the project. Under terms of the contracts, the tribes were guaranteed several levels of confidentiality. Information gathered within the tribes by tribal members did not have to be passed on to either INAW or SRP if this was not deemed to be necessary or if the information was deemed too sensitive. Information obtained by INAW did not have to be passed along to SRP if either of these conditions prevailed. The experts hired by INAW were thus able to offer opinions relative to management of a site without disclosing sensitive religious information about the site. The tribes' ability to control the levels of confidentiality was essential to the success of the project.

It is important to clearly establish tribal responsibility and accountability in the contracting process. Tribal contracts defining accountability are sometimes difficult to conclude. The Ramah Navajo Chapter contract in this project provides a good example. The Ramah Navajo Chapter (RNC) agreed with representatives of the Navajo Nation Historic Preservation Department (HPD) at the outset of this project that RNC represented only the concerns of its own people and not those of the entire Navajo Nation and that RNC did not speak for the Navajo Nation in general. At the same time RNC welcomed assistance from Navajo Nation HPD in providing consultation and expert services helpful in the preparation of its report. The Ramah Navajo Chapter recognized that the Navajo Nation might have addi-

tional concerns about this project beyond those of RNC. After considerable correspondence and much consultation among the various parties, including review by the Navajo Nation Department of Justice, questions concerning RNC's right and ability to continue to operate under its contract were resolved, and RNC completed its consultation on the project in conjunction with INAW. Even with this contract, when RNC reached conclusions contrary to what NNHPD desired, NNHPD suggested that RNC should not be allowed to sign agreements.

INAW assigned a number of experts to work with the various tribes during the project, to provide field, research, and ethnohistoric services and to assist with the production of the subsequent report. Each tribal group established a research team to work with INAW experts on the project. The tribal cultural resource teams were made up of individuals with special religious and traditional knowledge about their tribe and/or the Fence Lake area, and they were responsible for providing pertinent information of a religious or traditional nature on the project area. They held meetings, interviewed other tribal elders, and did extensive research among tribal members. Experts retained by INAW gathered past ethnographic research, historic documentation, tribal traditional history, and other materials that tied the tribal concerns to the archeological and historic record. Both the INAW staff and the cultural resource teams were responsible for working with SRP to produce a satisfactory Memorandum of Agreement on the subject of reburial of human remains recovered within the project area.

The Hopi, Zuni, and Acoma cultural resource teams met jointly on two occasions to discuss sensitive reburial issues. Representatives of Acoma, Zuni and Ramah met jointly at Zuni Salt Lake once. The Ramah Chapter held an open community meeting to discuss the project. Extensive fieldwork was carried out by the cultural resource teams of Hopi, Ramah, Acoma, and Zuni. The project was carried out in two phases. Phase I of the project was carried out during 1991 and focused on the portion of the proposed transportation corridor located in Arizona. Phase II of the project was carried out between 1991 and 1992 and included an examination of the eastern portion of the transportation corridor and the area of the proposed mine.

The objective of the project and of the subsequent resulting report was to enable the tribal groups and SRP to provide the Bureau of Land Management, the lead agency for cultural resource compliance, with the information needed to identify and consider the effects on historic properties within the project area, as required by Section 106 of the National Historic Preservation Act (NHPA). The information from this project will also be used by BLM in achieving compliance with other cultural resource laws that have been enacted in order to protect Native American religious freedom and ancestral burials, including the American Indian Religious Freedom Act (AIRFA) and the Native American Graves Protection and Repatriation Act (NAGPRA).

This paper provides only those conclusions relative to the application of Section 106 to archeological sites within the project area. Other reports and activities

associated with the Fence Lake Mine project focused on archeology as prehistory. Here we are concerned with archeology as traditional cultural property. Traditional cultural properties are protected by Section 106 of the National Historic Preservation Act because they are historic properties in the sense of the law. The working definition that is being used to define traditional cultural properties is drawn from National Register Bulletin 38 published by the National Park Service (Parker and King n.d.).

INAW and the tribes believe that many of the archeological sites investigated during the course of this project are eligible for inclusion on the National Register of Historic Places because of their traditional cultural values as well as for their archeological data potential. These sites include shrines, sacred places associated with the traditional history of the tribes, ancestral homesites, ancestral graves, rock art panels, and traditional collection areas. The three pueblo tribes—Acoma, Hopi and Zuni—each claim cultural affinity to the prehistoric Pueblo ruins in the project area and with the burials that are found associated with the those sites. They, and the Ramah Navajo Band, all have layers of traditional beliefs that are applied to the archeology. In addition, members of each of the tribes make traditional use of materials associated with the archeological record. Ramah Navajo people claim a cultural affinity with Navajo archeological sites or cultural materials, as well as to Navajo burials.

### **Archeology as Traditional Cultural Property**

Zuni conclusions relative to archeological sites provide a good example of the tribal relationship with archeology as traditional cultural property. During the many field trips undertaken during the course of the Fence Lake Project (1991-1992), the Zuni advisory team provided numerous examples of how the Zuni people treat ancestral archeological sites in their aboriginal territory as traditional cultural properties. A body of traditional religious and cultural beliefs are held communally by Zunis in regard to these sites, including beliefs associated with petroglyphs, potsherds, clay found associated with sites, lithics, areas identified as shrines, the roomblocks themselves, and, especially, associated burials. Lithics and sherds that are found by Zunis at ancestral sites are used for religious purposes. Advisory team members predicted what types of ceremonial offerings would be found during archeological testing procedures. They based their predictions on their interpretation of archeological features. For instance, at one site which they identified as having had a religious use, they predicted archeologists might find pipes, salt blowers, hematite, salt crystals and eagle bones shaped into whistles. Archeological testing of sites like this may or may not corroborate the Zunis theses. Testing the analogous relationship between contemporary Zuni beliefs and prehistoric archeological features has very important potential.

The Zunis readily identified many figures portrayed in rock art. Some petroglyphs were clearly meant to represent Zuni supernatural beings, such as the *Kolowisi* (or plumed serpent). The Zuni advisory team reported

(Hart—continued on page 40)

(Hart—continued from page 39)

that shrine areas are found around petroglyphs that have religious designs rather than animal figures. Some petroglyph figures seemed to be more recent, while others seemed temporally remote, with little contemporary meaning to the team.

While archeologists tend to focus on human-made features at sites, the Zunis frequently provided interpretations that related to the geomorphological features associated with archeology. For instance, at several sites the Zunis suggested that a main reason for the location of the site might have been the proximity to a clay source. In one case a site was found next to *he:é thlupsik-wa* (yellow clay). The team indicated beliefs held in common by the Zuni community in regard to how such clay should be handled and used. “If you don’t respect it and treat it properly, keep your mind clear, it (the yellow ochre) will turn to stone.” Other important geomorphological features found associated with archeological sites included stone nodules (*Athlashe:é*, which were created when the world was fresh), petrified wood, and natural water catchment features.

The Zunis have their own temporal classification of archeological sites, with names for Paleoindian, Archaic, Pueblo I, Pueblo II, Pueblo III, and Pueblo IV sites. These different types of sites are associated with different aspects of the migration narratives.

The Zunis have made an honest and fairly comprehensive effort to understand the concept of traditional cultural property as it applies to archeology within their territory. There are numerous examples of specific tribal responses to archeological sites. *Kiamakya* and *Kiatsutuma* are two sites not directly impacted by the Fence Lake project that are good examples of the Zuni position. *Kiamakya* is a place name that is familiar to nearly all Zunis from stories, traditions, prayers, and ceremonies, yet only a few—indeed, a handful—know where it is. If taken to this place, however, most Zunis will recognize it for what it is (the traditional descriptions are detailed) and will apply the body of knowledge about *Kiamakya*—restrictions, prayers, rules, etc.—to that site if they happen to encounter it. It is certainly important to Zuni culture to preserve this site.

*Kiatsutuma* is another good example of an archeological site that is a traditional cultural property. No Zuni that we talked with was able to tell us exactly where this site was (it was identified using a combination of documentary sources), yet it is very important to Zunis. It is named in Zuni stories, traditions, and prayers, and it is important to Zuni culture to preserve this site to which a body of traditional knowledge is applied by Zunis.

Other archeology (not all, but much of the total) is associated with traditional tribal knowledge that explains its presence and **demands** certain behavior when the site is encountered. Shrines, trails, and markers are obvious examples. A Zuni does not have to know where a shrine is in advance to know how he/she should behave on encountering it, and preservation of the shrine is important to Zuni culture. It is not uncommon for an individual to encounter a shrine that was previously unknown to that individual. Oftentimes tradition provides that a cultural property

should not be used; sometimes not even purposely visited or seen. This does not decrease its value as a traditional cultural property. Knowledge of a site may be centuries old (far more than the 50-year requirement), but knowledge of the location of the site may be limited or even temporarily absent. Again, this does not lessen the site’s importance as traditional cultural property.

The Zuni Cultural Resources Advisory Team has concluded that ancestral archeological sites within the area of their traditional sovereign boundaries are traditional cultural property of the Zuni Tribe. These archeological features should not be disturbed. Burials are associated with these features, and they should not be disturbed. Should disturbance of Zuni ancestral archeological features be absolutely necessary, it should be carried out by qualified archeologists, in accordance with Zuni Tribal policy, and in coordination with the Zuni Archaeology Program.

## Conclusions

Zuni believes, and INAW concurs, that ancestral archeological sites qualify for designation as Traditional Cultural Properties and possess the necessary criteria for inclusion in the National Register of Historic Places. Ancestral sites meet the tests for both tangibility and integrity of relationship and condition. The archeological sites are manifestations of those who lived in the region and who are not only representative of, but responsible for a broad portion of the history of that region. Many of the sites are associated with a number of important spiritual, mythic, and real persons of significance to the four tribes, and with important narratives that explain the religious and traditional history and meaning of the region to the four tribes. Construction at most of the sites embodies distinctive characteristics of recognizable types, periods, or methods. Continued research into these archeological sites will yield a wealth of information about the history and prehistory of the region.

Complete avoidance of sites is the preferred choice of all tribes in order to prevent potential damages to traditional cultural properties in the project area. Zuni and the other tribes emphasize that their primary desire is to see avoidance of all of the traditional cultural properties, sacred areas, shrines, and other sites of cultural affinity and patrimony within or adjacent to the Fence Lake Mine project area. They want it to be understood that their participation in consultations concerning this project does not indicate any acquiescence on their part toward development of the Fence Lake Mine.

Mitigation of adverse impacts to all rock art should include intensive documentation using state-of-the-art techniques. Minimally, documentation of rock art should include photos and line drawings of individual elements with a visible scale, and photos and videos to show spatial context of the panel and its relation to other panels and land form geography. Tribal input into interpretation of rock art is needed in the preparation of final archeological reports for the project.

Many tribal elders think that scientific archeology alone cannot adequately interpret the archeological record. Tribal elders have esoteric knowledge about particular artifacts and their context that is considered

essential to their interpretation. The tribes also suggest the establishment of an ongoing mechanism for involving the tribal teams in order to provide traditional knowledge relative to questions that will arise should the project be implemented.

The tribes expressed their appreciation for the efforts made by both the company (SRP) and the federal agencies as they worked to achieve compliance with the National Historic Preservation Act. Although the tribes oppose the mine, they worked closely with SRP on the consultations needed to ensure compliance with Section 106 of NHPA. Additionally, all of the tribes expressed serious concerns relative to overall United States energy policy. They questioned the need for this proposed mine and federal priorities in allowing such an undertaking, and they strenuously criticized the historic preservation and environmental compliance processes. The tribes stressed their belief that the Section 106 process begins too late, and that it should be started concurrently with the NEPA process so that information gathered would be available for study during the EIS phase. These concerns and criticisms were presented in supplemental letters, reports, and memoranda submitted to government agencies. All of the tribes stressed the fact that their participation in this project and the compliance process in no way represented any acceptance, support, or endorsement of the proposed mine.

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